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ABSTRACT

This paper describes the use of simulated appellate court proceedings as an educational tool in U.S. undergraduate colleges and universities (and schools worldwide). Undergraduate moot court is less common in the United States than is the law school form of appellate simulation. Research shows that moot courts benefit students as they perform legal research, learn how to apply principles to factual situations, formulate written delivery, develop persuasion skills, learn how to run a case, and develop coordination skills. This paper outlines various undergraduate moot court activities which have been identified, analyzed, and catalogued into two categories (the scholastic form and tournament form), and it discusses the use of Internet competitions. It also analyzes common and dissimilar features of these forms of appellate simulation and examines characteristics of a major, statewide, U.S. undergraduate moot court tournament in Texas, explaining case materials, judges and judging, benefits, and costs. After comparing Texas undergraduate moot court with law school moot court, the paper presents a research agenda for the future. (Contains 58 footnotes.) (SM)

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UNDERGRADUATE APPELLATE SIMULATION IN AMERICAN COLLEGES AND UNIVERSITIES

By

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and

Andrew B. Sommerman

Prepared for Presentation at

The Annual Meeting of

The Southwestern Political Science Association

Galveston, Texas

March 16-18, 2000

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Simulations of appellate court proceedings are widely used as an educational tool in American colleges and universities.[1] "Mooting" is also practiced with fervor in England,[2] Canada,[3] Australia,[4] New Zealand,[5] and elsewhere.[6] Moot court competitions in one

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[1] No recent survey of American law school programs could be identified by the authors. On the other hand, the authors could not identify any American law school without an appellate simulation program for their doctoral students. The authors conclude appellate simulations--"moot courts"--"appellate advocacy"-- "moots" --"mooting" -- are conducted at all American law schools. One indicator of the extent of law school moot court is the number of textbooks on "appellate simulation" marketed to American law students. For example, see Marc Goldstein, Heather Leaf, Syrena Case, Barbara Fiacco, and Joe Gershman (editors), *Introduction to Advocacy : Research, Writing and Argument* 6th ed. (Foundation Press, 1998); David Hill, *Introduction to Advocacy. Brief Writing and Oral Argument in Moot Court Competition* 5th ed. (Foundation Press, 1991); John Gaubatz , *The Moot Court Book: A Student Guide to Appellate Advocacy*, 3rd Ed. (Lexis Law, 1994). The authors have also researched and catalogued a large number of under-graduate appellate simulation activities in American colleges and universities, as discussed later in this essay.

[2] The authors could not identify any recent survey of the extent, scope and variation of appellate simulation anywhere outside the United States; an unknown percentage of such law schools use appellate simulation. However, "mooting" is apparently very extensively practiced in England and Wales, as the authors could not identify any British law school without a moot court program. Another indicator of fervor of mooting is a British Internet site dedicated to mooting: www.mootingnet.org.uk Mooting in Great Britain and other former colonies is almost exclusively *undergraduate* moot court, as law students in these countries are in pursuit of a baccalaureate degree. Two of the major British tournaments are the English-speaking Union/Observer/Lovett/White Durant National Mooting Competition, and the Blackstone/Herbert Smith/GTI Law Journal National Mooting Competition. A listing of law school moot programs in Great Britain and Wales can be found at the mooting Internet site mentioned above.

[3] Professor Dana Kingbury, College of Law, University of Saskatchewan, Saskatoon, reported to the authors that the major Canadian tournaments include the Gale Cup Moot (argued in Ontario each year and sponsored by the Canadian Bar Association), the Laskin Moot (bi-lingual), the Western Canada Moot (a trial advocacy moot), and the Aboriginal Law Moot (a non competitive meet).

[4]Anthony Cassimatis, Lecturer, TC Beirne Schoo! of Law, University of Queensland, Aca-demic Coordinator of the Jessup International Moot Court Competition for his school of law and co-author of a mooting manual published in Australia, reports that nearly all Australian law schools have moot court programs. Mr. Cassimatis also reported to the authors that almost all law school

form or another have been featured in legal training for hundreds of years, with origins in medieval England, according to American and Australian legal scholars.[7]

Minor variation in the conduct of moot court can be noted among and within the various countries where moot court competitions appear prevalent. Nonetheless,

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programs have internal moots and that major inter-collegiate tournaments include the Jessup International Moot, with the Australian regional rounds occurring each February; the Australian Law Students Association (ALSA) Moot, held each year at the annual meeting of the ALSA; Butterworths Constitu-tional Law Moot, the Wilem C. Vis International Commercial Arbitration Moot, a relatively new competition held in March and April; the Family Law Council Moot, hosted by the Family Law Section of the Law Council of Australia, held during July to September. Mr. Duncan Bentley, Associate Professor of Law, Bonds University, Queensland reported to the authors that yet another major moot is the International Maritime Moot, usually held in July. Mr. Les McCrimmon, Senior Lecturer, the University of Sydney School of Law, reports that in addition to various national moot court competitions, law schools in the same region often have regular moots, such as the annual competition between students of the University of Sydney and the University of New South Wales. The authors also wish to acknowledge the comments of Ms. Bobette Wolski, Assistant Professor of Law, Bond University School of Law, for her comments regarding mooting in Australia, including the observation that mooting varies considerably in Australian law schools, from scholastic forms to inter-collegiate tournaments.

[5] Mooting is widely practiced in all five New Zealand law schools, according to Senior Lecturer Scott Optican of the University of Auckland Law School. A National Tourna-ment is conducted annually, as well as specialty moots linked to discrete subjects, such as evidence law, employment law, family law, and Maori issues. Individual law schools also host tournaments, such as the Stroud Shield Moot conducted annually by the University of Auckland.

[6] Moot court tournaments are known to have been held in such countries as Estonia--the Estonian Moot Court Competition; France--the Manfried Lachs Space Law Moot Court, held in Paris in 1994, involving teams from the Netherlands, Finland; France and Germany; Poland--the Centre for European Studies Moot Court was held in 1995 involving students from Bulgaria, Poland, Russia and the Ukraine; Denmark--the European Law Moot Court for 2000: Ireland--the Bar Council and Butterworth Ireland Irish Moot Court Competition for 1998/99; Vanuatu--the South Pacific Moot Court Competition, September 24-26, 1999; Germany--the Hannover Moot Court 1999; Sweden--the Sporrong Lonnroth Moot Court Competition, held annually since 1984 (the origins of this tournament are discussed in Jacob W. F. Sundberg, "Comparative Note: Moot Court: An American Idea is a Nordic Setting, 19 *The Justice System J.* 229-233 (No. 2, 1997). Other moot courts the authors have identified include one at the Libera Universita Internatazionale degli Studi Sociali, Rome Italy, required in a class titled, "Introduction to American Law," LIA162, taught by Professor Cohen Abernathy. The authors also note that teams from the University of Hong Kong Law School reportedly competed in the 1998 Jessup International Law Moot Court Tournament.

[7] See Robert J. Martineau, "Appellate Litigation: Its Place in the Law School Curriculum," 39 *J. Leg. Educ*. 71-86 (No. 1 March 1989); Robert J. Martineau, Fundamentals of Modern Appellate Advocacy, 25-26 (San Francisco: Bancroft-Whitney Co, 1985); Andrew Lynch, "Why Do We Moot? Exploring the Role of Mooting in Legal Education," 7 *Leg Educ Rev* at 68-69 (Spring, 1996).

common components include: teams of student-contestants, a imaginary client impaired by an equally imaginary legal issue, briefs and oral arguments pertaining to both sides of the legal problem, and judging of student performances by panels of attorneys, law faculty, or, on occasion, members of the judicial branch of government. The declaration of one team as "winner" ordinarily constitutes the concluding ceremony.

Only two empirical studies--both conducted by Australian law faculty--can be identified which examine educational benefits and the costs of appellate simulation. Professor Andrew Lynch employed focus groups in a study[8] of undergraduate law students, and found moot court participants: (1) gain practical preparation for the real world; (2) learn from peers and develop group skills; (3) suffer fear and enjoy elation; and (4) learn a large amount of substantive law. Professor Mary Keyes and Michael Whincop[9] surveyed one hundred students completing a three week long experimental "formative moot."[10] The authors concluded the students benefited from performing legal research, learned how to apply principles to a factual situation, formulated written delivery, developed persuasion skills, learned how to run a case, and developed group coordination skills.

Although no empirical studies are known to have been conducted in the United States, a small group of proponents, predominantly law professors, have praised moot court in recent years, claiming participants enjoy certain specific educational benefits

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[8] "Why We Moot? Exploring the Role of Mooting in Legal Education," 7 *Legal Educ Rev* 65-96 (No. 1, 1996).

[9] "The Moot Reconceived: Some Theory and Evidence on Legal Skills," 8 *Legal Educ Rev*. 1-41 (No. 1, 1997).

[10] One significant change made by Professors Keyes and Whincop in conducting the 'formative moot' was to eliminate oral argument. Other changes are discussed in their report of the research at pages 15-24.

similar to those found in the Australian studies.[11] However, these American moot court enthusiasts offer only anecdotal commentary to substantiate their claims; empirical evidence is lacking. Moreover, American moot court critics can also be identified, as well as other commentators seeking to improve various law school moot court procedures and processes.[12]

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[11]Benefits of moot court participation claimed by these American commentators include: improved writing and oral communication skills, increased self-confidence, enhanced legal reasoning and critical thinking skills, increased knowledge of substantive law, practical preparation for appellate practice, and increased employment opportunities for those achieving competitive success. Hosts also benefit from improved relations with alumni and perhaps enhanced reputation standing if teams are successful. American law faculty offering praise include: Michael V. Hernandez, "In Defense of Moot Court: A Response to 'In Praise of Moot Court--Not,'" 17 *Rev of Litigation* 69-89 (No. 1, Winter 1998); William H. Kenety, "Observations on Teaching Appellate Advocacy, 45 *J Legal Educ* 582-586 (No. 4, December 1995); John T. Gaubatz, "Moot Court in the Modern Law School, 31 *J. Legal Educ* 87-107 (1981); Charles Chase McCarter, "Questions and Answers Regarding Moot Court," 12 *Stetson L Rev* 759-767 (1983); Andrew M. Low, "Moot Court, " 22 *Colorado Lawyer* 2371-2372 (Nov. 1993); Robert J. Martineau, "If Moot Court Has All the Relevance of a High School Debating Team, Why Do Law Students Cling Tightly to It? 16 *Student Lawyer* 42-43 (September 1987), and Robert J. Martineau, "Appellate Litigation: Its Place in the Law School Curriculum," 39 *J. Leg. Educ.* 71-86 (No. 1 March 1989).

[12]Criticisms of law school moot court are almost exclusively centered upon concerns that appellate simulations differs greatly with actual appellate hearing practices. See J. Thomas Sullivan, "Teaching Appellate Advocacy in an Appellate Clinical Law Program," 22 *Seton Hall L.Rev* 1277-1307 (1992); Robert J. Martineau, "Moot Court: Too Much Moot and Not Enough Court," 67 *Amer Bar Assn J.* 1294-1297 (October 1981); Frank Turkheimer, "A More Realistic Approach to Teaching Appellate Advocacy, 45 *J. Leg. Educ* 113-118 (No. 1, March 1995); Alex Kozinski, " In Praise of Law School Moot Court--Not," 97 *Colum L R* 178-197 (No. 1, January 1997). Judge Kozinksi's article was also published without footnotes in the 1997 *American Lawyer* at 91-94 (January) . See also Walter A. Rafalko, "Neorealism in the Appellate Moot Court Program," 19 *J of Leg Educ* 107-111 (No. 1, 1966) and Kenneth B. Germain, "Legal Writing and Moot Court at Almost No Cost: The Kentucky Experience, 1971-72," 25 *J. Leg. Educ*. 595-603 (No. 1, 1973). No commentary could be found which examines the costs of American moot court activities to participants, faculty, or other parties.

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AMERICAN UNDERGRADUATE

APPELLATE SIMULATION

Undergraduate moot court is less known and less widely practiced in America than the doctoral student (law school) form of appellate simulation.[13] Commentary describing any aspect of American undergraduate moot court is sparse.[14] No survey can be identified which has examined the extent or variation of undergraduate moot court in American colleges and universities. No empirical study can be identified which carefully examines the costs or benefits to participants.

This essay outlines a number of American undergraduate moot court activities which have been identified, analyzed, and then catalogued into two distinct categories: the ***scholastic*** form and the ***tournament*** form. [15] Common and dissimilar features of these

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[13] Even less well known are appellate simulations involving American secondary level--"high school"--students. Although these activities have not been researched by the authors, two substantial programs are known to exist: in Dallas, Texas, a program is sponsored by the Dallas Bar Association involving various Dallas Independent School District high schools and in Sacramento, California, a large regional competition is held annually involving high school students.

[14] Edward Collins, "The Use of Jessup International Moot Court Cases in Political Science Departments," 70 *Amer. J. of Int'l Law* 809-811 (1976); Phillip J. Cooper, "Undergraduate Moot Court: A Simulation for Undergraduate Courses in Political Science," 7 *Teaching Political Science* 105-118 (October 1979); Edward Collins and Martin Rogoff, "Uses of an Inter-Scholastic Moot Court Competition in the Teaching of International Law," 24 *Political Science* 516-520 (No. 3, 1991); Lindsley Smith, "The Undergraduate Legal Education Course," 2 *Amer. Comm. J.* 1-18 (No 2, 1999); Philip Lader, "Experiments in Undergraduate Education: The Teaching of Law in the Liberal Arts Curriculum," 25 *J.Legal Educ.* 125, 131-145 (1973); Janice Shaw Crouse and Judie Mosier, "The Extra-Curricular Perspective: The Moot Court," Unpublished paper presented at the Annual meeting of the Speech Communication Association, 65th, Louisville, Ky. (Nov 4-7, 1982).

[15] The authors do not claim to have identified *every* undergraduate moot court activity in America; indeed, new activities are discovered by the authors daily. However, a signif-icant (but unknown) percentage of such activities have been identified and catalogued. The authors welcome information regarding programs or activities not specifically mentioned in this essay.

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forms of appellate simulation are then analyzed. Characteristics of one of the major American undergraduate moot court tournaments are examined in some detail. Key elements of this undergraduate tournament are then compared with characteristics of the more commonly practiced law school form of appellate simulation.

The *Scholastic* Form of Undergraduate Moot Court

In the ***scholastic*** form of American undergraduate appellate simulation, students of a single undergraduate class, such as Constitutional Law,[16] Constitutional History,[17] Business Law,[18] International Politics/ Law, [19] or a Communication/ speech class,[20]

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[16]Faculty known to require moot court in a Constitutional Law class include (among others): Professor Kimi King, Department of Political Science, the University of North Texas (Denton 76203-5340), in her PSCI 4200, "Constitutional Law;" Professor Robert Hardgrove, Department of Political Science, the University of Texas at Austin (78712-1087), in his GOV 331L, "Law and Society;" Professor Reginald Sheehan, Department of Political Science, Michigan State University (Lansing 48824), in his PLS 421, "Moot Court and Legal Research in Federal Law;" Professor William Lasser, Department of Political Science, Clemson (Clemson, S.C. 29634-1354), in his POLS 432, Constitutional Law II; Professor Michael Gizzi, Department of Political Science, Mesa State College (Grand Junction, CO. 81502), in his POLS 3412 "American Courts;" Professor John E. Finn, Department of Government, Wesleyan University (Middletown, CN. 06459), in his G203, "American Constitutional Interpretation," and his G250, "Civil Liberties;" Professor Barbara Craig, also of Welseyan University, has also used moot courts her version of G203, "American Constitutional Interpretation;" Professor Mark Tunick, Honors College, Florida Atlantic University (Jupiter FL 33458) uses forms of appellate simulation in three law classes: POLS 4603, "Honors Constitutional Law," POLS 3691, "Law and American Society," and POLS 3699, "Privacy;" Professor William Schreckhise, Department of Political Science, the University of Arkansas (Fay-etteville 72701) requires moot court in his PLSC 4253, "The Supreme Court and the Constitution;" Professor David Marion, Department of Political Science, Hampston-Sydney College (Hampton-Sydney, VA. 23943, requires a moot court in his POLS 430 and 431, "American Constitutional Law I and II" classes.

[17] An example of an undergraduate instructor who has used moot court in a constitutional history class is Professor Paul G.E. Clemens, Department of History, Rutgers University (New Brunswick, N.J. 08901), in his HIST 01:512-402, "American Constitutional History."

[18]Professor Suzy Rogers, College of Business, the University of Wisconsin River Falls (54022-5001), requires a moot court of her students in BLAW 265. Professor Rogers has also produced a video-tape of how to stage such a moot court for the American Bar Association.

[19] Faculty regularly using moot courts in an International Politics or International Law class include Professor Barbara Baudot, Department of Political Science, Saint Anselm College

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(among other academic topics[21]) are *mandated* to participate in an appellate simulation as part of the requirements for successfully completing that class. Student performances are ultimately evaluated by the instructor; students therefore clash over grades. Cases are developed by each individual faculty member, reflecting each professor's idiosyncratic interests. The percentage of a student's final course grade determined by moot court performance varies among instructors.[22] Briefs ands oral argument are often required, although some faculty demand only oral presentation.[23] In some of these scholastic moot courts, students assume roles as judges and as attorneys, with the instructor also

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(Manchester, N.H. 03102-1310) in her POLS 14, "International Law; " Professor Kurt Gaubatz, Department of Political Science, Stanford University (Stanford CA 94305), in his PS 142K, International Relations;" Professor Robert Gorman, Department of Political Science, Southwest Texas University (San Marcos 78666-4601), in his POLS 4365, " International Law."

[20] Faculty requiring moot court in Communications or Speech classes include Professor Ken Salter, Communications Studies, San Jose State University, CA 95192-0012, in his COMM 191, "Moot Court Competition, " Professor Joseph Hemmer, Department of Communications, Carroll College (Wankesha, WI 53186), in his Communication 350, "Communication Law;" Professor James A. Aune, Communications Studies, Texas A & M University (College Station 77843-4233), in his SCOM 243, "Argumentation and Debate" classes.

[21]For example, Professor Dane Cameron, Professor of Political Science, Department of Political Science, California State University Chico (95929), requires a moot court of students in his Political Science 291G, "Simulation in Public Law;" Professor James Ward, Department of Political Science, the University of California Riverside (92521) uses a moot court in his PS196A/ 197A, "Legal Research, Writing, and Advocacy" class; Professor David J.W. Vanderhoof, Criminal Justice Studies, the University of North Carolina Pembroke (28372-1510), requires a moot court of students enrolled in CRJ 400, "Criminal Procedure;" Professor David Ryden, Department of Political Science, Hope College (Holland, MI 49423) has used moot courts in his "Introduction to Government" classes. Professor Scott Blair, Geological Sciences, Ohio State University (Columbus 43210), requires moot court in his H431, "Geological Sciences: Science in the Court-room." The authors could not find any similar example of a moot court required in a basic science or engineering subject.

[22] The authors have acquired a number of course syllabi. The percentage of the final course grade determined by performance in a moot court activity varies from a low of 10% of the final grade to a high of 50%.

[23] Examples of faculty who require briefs as well as oral argument include: Professor James Ward, Department of Political Science, the University of California Riverside (92521); Professor Kimi King, Department of Political Science, the University of North Texas, Denton (76203-5340); Professor David Ryden, Department of Political Science, Hope College (Holland MI 48824).

possibly serving as a judge.[24] In other scholastic moot courts, colleagues of the instructor might serve as judges, or members of the local bench, or local practicing attorneys, or various combinations thereof.[25] Great variation in the scholastic form reflects the personal preferences of each professor and perhaps available resources.

The *Tournament* Form of Undergraduate Moot Court

In the other form of undergraduate appellate simulation--the moot court ***tournament***--teams of students *voluntarily* compete against other teams as an extra-curricular activity. Performance is therefore motivated by a desire to acquire a trophy, or for the attainment of other intrinsically personal rewards.[26] Seven regional, state-wide, or campus-wide tournaments are known to be currently conducted annually in America: one in southern California,[27] another in northern California,[28] and in Illinois,[29] Indiana, [30] Ohio,[31] Oklahoma,[32] and Texas.[33]

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[24]For example, Professor Robert Hardgrove, of the Department of Political Science, University of Texas at Austin (78712) uses students in roles as judges, as well as Professor Mark Tunick, Honors College, Florida Atlantic University (Jupiter, FL 33458) in several classes in which moot court is required..

[25] Professor Barbara Baudot, Department of Political Science, Saint Anselm College, (Manchester, N.H.) has reported to the authors that members of the New Hampshire Supreme Court have judged her moot courts; Professor Kimi King of the University of North Texas reports using other faculty and lawyers practicing in the area to judge her moot courts; Professor Dane Cameron of California State University Chico and Professor Ken Salter of San Jose State University have reported that practicing attorneys, mainly alumni of their programs, are used as judges. Professor David Marion, Department of Political Science, Hampton-Sydney College, reports using members of the local bar association and alumni attending local law schools are judges in his moot courts.

[26] A small percentage of students receive academic credit--usually one credit on a pass/fail basis--for participating in moot court tournaments. For example, Howard Payne Univer-sity offers POLS 3161, "Moot Court" and Hardin-Simmons University offers a similar one credit pass/fail course, PS 2105, "Moot Court."

[27] The Stanley Mosk Undergraduate Moot Court Tournament, is organized annually, usually during the summer months, by Professor Jeanne Curran, Department of Sociology, California State University, Dominguez Hills (Carson 90747).

These tournaments vary in structure and process. For example, in three of the tournaments--in both of the California tournaments and the event in Indiana--contestants are students of a single campus;[34] the other tournaments are inter-collegiate, drawing students from as many as one dozen different colleges and universities. Another difference is that in three of the tournaments--in northern California and in the tournaments in Illinois and Oklahoma--students are required to submit written briefs and engage in oral argument. In the others--the southern California, and the Indiana, Ohio, and Texas tournaments--contestants are judged only on oral argument.

Variation occurs in judging. In Illinois and Oklahoma, the tournaments are part of a larger state-wide simulation of state government; in the larger simulation students assume such roles as governor and other executive branch officials, as state legislators, lobbyists, justices of the state supreme court, and so forth; judging of these two moot courts--held before each state "supreme court"--can be influenced by the political process

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[28] The northern California tournament is campus-wide, involving upwards of 50 teams, held each May at the campus of California State University Chico, and organized by Professor Dane Cameron, Department of Political Science, Cal State Chico (95929).

[29] The Model Illinois Government Association conducts an annual moot court tournament as part of their state government simulation. For information contact Professor Calvin Muos, Political Studies Program, University of Illinois Springfield (62794).

[30]The Wabash College Moot Court Tournament is a campus wide annual tournament organized by Professor David Timmerman, Department of Speech, Wabash College (Crawfordsville, IN 47933).

[31] The Seiberling Undergraduate Moot Court Competition is an annual regional tourna-ment conducted each year attracting competitors from undergraduate programs in Ohio and Pennsylvania. Contact Professor J. Dean Carro, the University of Akron School of Law (OH 44325-2901), for further information.

[32] The Oklahoma Intercollegiate Legislature (O.I.L) Moot Court is part of the activities of a state government simulation. O.I.L. Box 300001 Midwest City, OK. 75140-0001.

[33] The Texas Undergraduate Moot Court Association conducts three state-wide tourna-ments annually. Contact the authors for further information.

[34] All three of these tournament sponsors expressed desire to the authors to expand the contestants to other campuses.

unfolding in the larger simulation. In the other five tournaments--the two in California, and those in Indiana, Ohio, and Texas--undergraduate faculty, law students, lawyers, or perhaps members of the judiciary, serve as tournament judges; "simulation politics" in these tournaments is not part of the process.

Only two of the tournaments--those conducted in Ohio and Texas--are associated in any way with law schools. In Ohio, the University of Akron School of Law hosts an annual tournament, the Seiberling Undergraduate Competition, involving students from about a dozen Ohio and Pennsylvania colleges and universities.[35] In Texas, three law schools have hosted state-wide undergraduate tournaments in recent years: the Baylor School of Law, Texas Tech University School of Law, and Texas Wesleyan University School of Law, as outlined in detail later in this essay.

Internet Competitions

Judicial simulations have recently been initiated using electronic linkages of contestants who are physically separated by great distances, thousands of kilometers. The Teaching Rights Online Project[36] ("THRO") includes a simulated World Court proceeding; recent competitions have involved undergraduate students from North America, Europe, and Africa. Another example of the emerging electronic form of competition is a simulation linking undergraduate students of North Carolina and

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[35] One preliminary round is held at the Seiberling; the highest scoring two teams then compete in a final round.

[36] The organizers of THRO may be contacted at http//oz.uc.edu/thro A recent conference paper on THRO may be obtained from Professor Howard Tolley, Department of Political Science, University of Cincinnati (Ohio 45221-0375).

California.[37] Inter-continental electronic competitions might well become commonplace in the 21st century.

THE TEXAS UNDERGRADUATE MOOT COURT TOURNAMENTS

State-wide tournaments have been a fixture in Texas since the early 1990s. Two person teams from a number of colleges and universities[38] compete at three annual competitions. Only oral arguments are heard; no briefs are submitted by students.[39] Two preliminary rounds[40] are conducted on a Friday afternoon in which all contestants are required to argue each side of the case. Three elimination (or "trophy"[41]) rounds,

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[37] Contact Professor David Vanderhoof, Criminal Justice Studies, The University of North Carolina, Pembrooke (28371-1510) for further information.

[38] Over the past year, undergraduate students from the following campuses competed in one or several tournaments: Hardin-Simmons University, Howard-Payne University, Mid-Western University, Stephen F. Austin University, Texas A & M University, Texas Wesleyan University, the University of Dallas, the University of North Texas, the Univer-sity of Texas at Arlington, and the University of Texas at Tyler. In prior years, student teams have also competed from such colleges as The University of Houston Clear Lake, St. Mary's University, Sul Ross University, and Texas Tech University.

[39] Although brief writing is thought to be a valuable learning tool for students, practical considerations, such as the lowered rate of participation should briefs be required, and the practical problem of reading and evaluating these briefs, outweigh the educational gain from requiring them, in the opinion of faculty sponsors.

[40] The maximum number of teams permitted to compete in preliminary rounds is regulated by each host. A typical state-wide competition involves thirty to thirty five teams. In addition, a third "bye" round is occasionally necessary-- if an odd number of teams register, or there is a shortage of judges and/or courtrooms and the host wishes to accommodate all teams registered for the tournament.

[41] Students refer to these elimination rounds as "trophy" or 'medal" rounds because all participants receive trophies. Those eliminated in quarter and semi-final rounds receive appropriately identified trophies, along with the "runner-up" and "first place." Trophies are also awarded to the ten highest individual scoring contestants in a Friday evening ceremony for each tournament. The top five scoring students in all three (academic year) tournaments are acknowledged with trophies.

are conducted the following morning, in which the eight highest scoring teams from the preliminary rounds compete in "quarter-final" rounds; the remaining four teams in turn compete in two "semi-final" contests, and then the top two remaining teams compete in a "final" round. This final round, after which one team is declared the tournament "winner," is usually concluded by 2 pm on Saturday afternoon.

Every round of the tournament consumes about an hour, with each two person team permitted a maximum of twenty minutes of oral presentation (including rebuttal) and questioning by judges.[42] After completion of all rounds--including the elimination rounds--judges evaluate and score each contestant and then review performances with each contestant, in a brief evaluation and feed-back process lasting ten or fifteen minutes.[43]

Case Materials

Cases are developed by faculty from participating Texas colleges and universities,[44]

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[42] Teams are permitted to allocate the twenty minutes between each contestant; however, a minimum of seven minutes is permitted for one competitor and a maximum of thirteen minutes. Maximum rebuttal for Petitioner is three minutes. A recently instituted modifi-cation is that for final round total time is expanded to twenty-five minutes for each team, to accommodate questioning by the enlarged panel of judges.

[43] Professor Andrew Lynch recommends such a structured de-briefing in order that the student engage in critical self-reflection. See his further comments concerning reflective observation at pages 95-96 of his research report, cited in footnote 8.

[44] A key faculty for a number of years in the development of cases has been Professor Virginia Armstrong, Department of Political Science, Hardin-Simmons University, Abilene. Professor Don Gregory, Department of Political Science, Stephen F. Austin University, Nachogdoches, has also been a major contributor to case development. More recently, Mr. Victor Carrillo of Hardin-Simmons University has recently been actively involved in case development for the Texas tournaments..

and concern a topic of current events and interest, such as "Teen Curfews," "Physician Assisted Suicide," "Affirmative Action," or "State-Religion relations."[45] A "closed" case approach is used--only the moot case and between six and eight supporting cases (and materials cited therein), may be relied upon by contestants.[46] Cases are carefully crafted to focus upon two distinctive issues, one for each member of the team. Moreover, the cases are "balanced" to assure that students might be judged on their performance, rather than upon the merits of the case.[47]

Judges and Judging

Judges are provided by hosting law schools. Preliminary, quarter, and semi-final judging is by second and third year law students. Two judge panels are typical in these rounds, again at the discretion of the host. The final round is usually judged by a panel of law faculty, but sometimes the host invites local members of the judiciary or practicing attorneys to participate in this culminating round of the tournament, when the tournament runner-up and finalist is announced.

[45] The authors intend to eventually covert all the recent cases into electronic impulses suitable for transmission via the global Internet to requesting parties.

[46] Although the "open case" method used in many American law school tournaments might be preferred from an educational standpoint, the faculty advisors believe that student participation rates might plummet if students had to research all aspects of their cases. Moreover, participating law schools might be less willing to accept the role of hosts if their students and faculty also had to research the cases. Using a "closed" case approach also affords certain controls or limits upon the extent of argumentation. These advantages are believed to outweigh the educational losses from using the "closed case" method.

[47] "Balancing" is achieved through careful development of the moot case and careful inclusion of supporting cases.

A standardized judging form is used for all tournament rounds.[48] Student performances are evaluated in four broad categories: knowledge of the subject matter, response to questioning, forensic skills, and courtroom demeanor, using a point system of 0 to 25 for each category. Judging guidelines, instructions, and detailed criteria are distributed to all judges.[49] Consistency in judging is a goal of the tournament preparation process[50].

Benefits and costs

Although empirical data is lacking in regard to the benefits of Texas undergraduate moot court, the authors share several sentiments expressed by law faculty, beliefs based wholly upon anecdotal evidence: "mooting" is believed to contribute to improved oral communication skills, increased case analysis and summarization skills, enhanced legal reasoning and critical thinking, increased understanding of substantive law, increased poise and self-confidence, overall improvement in study habits, and perhaps might be related to enhanced rates of acceptance in doctoral programs of legal study. Faculty also report improved relations with those alumni who volunteer time and energy in preparing students for competitions. However, students also are burdened by certain costs of participation: tournament preparation time, pressures placed on regular academic work, travel costs, and

[48] The judging form has been converted into electronic impulses suitable for transmission via e-mail and will be forwarded to interested parties upon request.

[49] Judging guidelines and instructions are also available in electronic form and will be forward to interested parties upon request.

[50] A common student complaint is "inconsistency" of judging. Some faculty advisors try to soothe feelings by pointing out that in the "real world" judges are frequently inconsistent in their rulings.

lowered employment income for those tournaments some distance from campus and home.[51]

TEXAS UNDERGRADUATE MOOT COURT COMPARED WITH LAW SCHOOL MOOT COURT

Although Texas undergraduate moot court tournaments are similar in a number of important characteristics to the tournaments associated with American law school doctoral (J.D.) programs,[52] differences can also be noted, as summarized in Table 1. In common, of course, are fictional clients. Critics of law school moot court have complained that law school students do not identify with or develop emotional bonds with these imaginary moot court "clients" as an attorney might in the real world of appellate practice.[53] A similar complaint can be registered regarding undergraduate moot court contestants.[54]

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[51] Faculty should pay close attention to the demands placed on students' time of compe-tition participation, for if tournament "success" adversely affects current classwork, then students *must* discontinue involvement with moot court.

[52] Law school moot courts also vary considerably. Law students of some schools, such as the South Texas School of Law, participate in a range of moot court activities, such scholastic moot courts, intra-school moots, and also inter-collegiate competitions. Table 1 was based upon "typical" national moot court competitions, such as the American Bar Association annual tournament, in which one author (Professor Sommerman) participated in 1986 and 1987.

[53] For example, see Kozinski, *op.cit.* at 184-185 .

[54] Both authors will attest that undergraduate students must be repeatedly admonished in tournament practice sessions to put a little emotion into their oral presentations; students must be reminded, "Your 'client' has been harmed!!"

TABLE 1
TEXAS UNDERGRADUATE COMPARED WITH LAW SCHOOL MOOT COURT

	TYPICAL LAW SCHOOL MOOT COURT	TEXAS UNDERGRADUATE MOOT COURT
CLIENT	Fictional	Fictional
LEGAL PROBLEM	Fictional	Fictional
UNIVERSE OF CASE	Sometimes Infinite/ Sometimes Limited	Limited
CLIENT ATTACHMENT	No	No
LEGAL BRIEF	Yes	No
COMPLETE RECORD	No	No
ARGUE BOTH SIDES OF CASE?	Yes	Yes
USE ALL ORAL TIME	Yes	Yes
FOCUS OF JUDGING	Performance	Performance
JUDGES	Real Judges	Law Students, Faculty and Attorneys (Real Judges Occasionally)

In both law school and undergraduate moot court, the case problem usually rises to a level of some U.S. Constitutional significance, another point of contention with some critics.[55] And, while some law school moot cases are unlimited in their potential legal scope, undergraduate students focus upon two carefully crafted issues. Perhaps more importantly, law school moot court contestants are required to submit briefs and present oral arguments; at the undergraduate level in Texas only oral arguments are prepared and presented, as indicated in Chart 1. Lack of written briefs in the Texas undergraduate tournaments constitutes a significant difference between the two forms, in the opinion of the authors.

In both forms of moot court, students argue for both petitioner and respondent, students consume every second of allotted time, and judging is based upon performance rather than the merits of the case. In real appellate hearings, critics complain, attorneys argue only one side of the case, every second of available time is not consumed in oral argument, and judges rule on the merits of the case.[56]

One important difference between the two law school and undergraduate moot court as noted in Chart 1, is the back-ground of judges. American law school usually recruit actual members of the courts to serve as tournament judges. Undergraduates in

[55] These critics correctly complain that most appellate work in the United States occurs in state appellate courts involving issues of record; that relatively few appeals cases in America concern issues of US Constitutional interest. For example, see Kozinski , *op.cit*. at 189-192 and Gaubatz, *op.cit* at 88. Kozinski also argues that it is rare to find two equally "balanced" issues in an actual appellate proceeding.

[56] See Martineau, *op. cit*., at 1297 ; Kozinksi, *op. cit*, at. 182-183.

Texas tournaments are judged by second or third year law students; only in the final round are law faculty involved, or perhaps local attorneys or occupants of local judgeships.

RESEARCH AGENDA

Research should be undertaken into the extent, scope, evolution, and variation of appellate simulations globally, perhaps using the materials suggested in Chart 1. These data points might be used to categorize all of the known appellate simulations world-wide, and aid in dissemination of information globally.[57]

Research should also be undertaken to determine with greater precision the educational benefits of appellate simulation--and the costs--to contestants, to their faculty advisors, and perhaps to other parties. Perhaps the claims of moot court enthusiasts would be bolstered by such data--and the critics silenced.. A possibility exists that anatomic or procedural differences discovered in such a survey might be explained by inter-cultural differences, or by differences in the origins and evolution of judicial conduct, or even by differences in the processes of legal training. A possibility also exists that divergence's existing twenty-five years ago in appellate simulation structures and pro-

[57] The authors welcome suggested improvements to the data collection instrument.

CHART 1:
POSSIBLE INSTRUMENT FOR DATA COLLECTION REGARDING APPELLATE SIMULATION

BASIC DATA

ACTIVITY NAME: _____

TYPE OF ACTIVITY: (scholastic or tournament) _____

LOCATION/DATES/FREQUENCY: _____

DEADLINE FOR ENTRY: _____ **CONTESTANT EDUCATION LEVEL:**_____

CONTACT INFORMATION: _____

_____

CASE /ORAL ARGUMENT

CASE TOPIC: _____

"OPEN" OR "CLOSED" CASE?_____ **MAXIMUM # ON TEAM:**_____

DEADLINE FOR SUBMISSION OF BRIEFS :_____

MAXIMUM ORAL ARGUMENT TIMES:

PETITIONER:_____ **RESPONDENT:** _____ **REBUTTAL:** _____

(Do the above times include time consumed by judges in questioning?)

TOURNAMENT STRUCTURE/PROCESS

ELIMINATION PROCESS USED_____

_____

JUDGING CRITERIA GIVEN TO JUDGES?_____ **JUDGING FORM?**_____

WHO JUDGES: (Students, faculty, lawyers, etc?)_____

AWARDS/TROPHIES:_____

Please forward to:

cesses are gradually diminishing under the twin engines of global economic and legal integration. [58]

[58] A interesting symposium on "Globalization of the American law School" was published in the Journal of Legal Education in 1996 {46 *J.of Leg. Educ* 311-341 (19960}. However, none of the contributors mentioned moot court processes.